1. S.B. Civil Sales Tax Revision No.478/2006

M/s. Maheshwari Minerals & Chemicals.
vs.
Assistant Commercial Taxes Officer, Udaipur.

2. S.B. Civil Sales Tax Revision No.486/2006

M/s. Maheshwari Minerals & Chemicals.
vs.
Assistant Commercial Taxes Officer, Udaipur.

3. S.B. Civil Sales Tax Revision No.489/2006

M/s. Maheshwari Minerals & Chemicals.
vs.
Assistant Commercial Taxes Officer, Udaipur.

4. S.B. Civil Sales Tax Revision No.510/2006

M/s. Maheshwari Minerals & Chemicals.
vs.
Assistant Commercial Taxes Officer, Udaipur.

Date : 11.5.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Dinesh Mehta, for the petitioner.
Mr. Sangeet Lodha, for the respondent.

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Heard.

Since all these revisions involved common question of law, they are decided by this common order.

The only question of law which goes to the root of

the matter is :-

> “Whether the Rajasthan Tax Board committed error of law by setting aside the order of remand passed by the Deputy Commissioner (Appeals) dated 15.4.2005 ?”

Brief facts of the case are that the assessee did not appear before the assessing authority and, therefore, the assessing authority by order dated 14.6.2004 on the basis of material available before him held that the assessee is liable to pay the tax on his product which as per the order of assessing authority were stone powder and chips and which according to the assessee was known as 'murgidana'. The assessing authority held that the product of the assessee cannot be treated as poultry feed and, therefore, the assessee is liable to pay tax at the rate of 8%. The assessing authority, after assessing the tax liability of the assessee in all these matters levied interest also.

The order of assessing authority was challenged by filing appeal by the assessee. The Dy. Commissioner (Appeals), Commercial Taxes, Udaipur held that in fact, the assessee was not given opportunity of hearing and, therefore, the matter is required to be reconsidered. However, while remanding the matter to the assessing authority, the Dy. Commissioner (Appeals) made certain

observations, which according to the revenue, may affect the decision of the assessing authority after remand. The Dy. Commissioner (Appeals) observed that in case, it is found that the product of the assessee is used as poultry feed either independently or by mixing the product in other poultry feed, then in that situation, the assessee be given benefit under the Government's notification dated 5.3.1979. It is submitted that in fact, by this observation, the Dy. Commissioner had decided that in case, the assessee is able to prove that his product was used by the purchaser as poultry feed, then on the basis of that end use of the product, the product of the assessee be treated as poultry feed. It is submitted that the use of the product of manufacturer by some of users may be a relevant fact but cannot be a decisive fact deciding the nature of the product. Hence, the revenue preferred appeals before the Tax Board to challenge the order of the Dy. Commissioner (Appeals).

The Tax Board allowed the revenue's appeals on merits by the impugned order and held that the petitioner/assessee's product is not a poultry feed. Being aggrieved against the order of the Tax Board, the assessee has preferred these revisions.

The grievance of the assessee is that the Tax Board committed error of law in setting aside the order

of Dy. Commissioner (Appeals) which was only order of remand and before setting aside the said order, the Tax Board itself decided the question whether the product of the assessee is poultry feed or not ? The Tax Board has not even set aside the finding of the Dy. Commissioner (Appeals) that no opportunity of hearing was given to the assessee before passing of the order by the assessing authority. It is also submitted that in view of the above reason, the revision petition preferred by the assessee deserves to be allowed.

I considered the submissions of learned counsel for the parties and perused the impugned orders.

A perusal of the order of the Tax Board dated 26.7.2006 clearly reveals that the Tax Board set aside the order of the Dy. Commissioner (Appeals) and itself decided the disputed question of fact for which the Dy. Commissioner clearly observed that opportunity of hearing was not given to the assessee. When opportunity of hearing was not given to the assessee by the assessing authority and there was no factual foundation before the assessing authority, then the revenue also had no opportunity to meet with the facts and grounds of the assessee on the basis of which the assessee is claiming that his product is poultry feed. In that situation, in fact, the Dy. Commissioner (Appeals)

rightly held that the product of the assessee, if is found as poultry feed, then the assessee is entitled to the benefit. Then entire issue should have been sent back to the assessing authority for deciding after giving opportunity of hearing to both the parties. The Tax Board without setting aside the finding of the Dy. Commissioner (Appeals) that opportunity of hearing was not given to the assessee, illegaly set aside the order of the Dy. Commissioner (Appeals) by which the Dy. Commissioner (Appeals) directed the assessing authority to decide the issue after hearing the assessee.

In view of the above, these sales tax revisions are allowed, the orders dated 27.7.2006 passed by the Tax Board in all the cases are set aside. The Assessing Authority shall now decide the issue in accordance with law after giving full opportunity of hearing to both the parties and uninfluenced by any of the observations made by the Dy. Commissioner (Appeals) in his order dated 15.4.2005 or by the Tax Board in its impugned order dated 27.7.2006.

The assessee shall appear before the assessing authority on 12.6.2007.

(PRAKASH TATIA), J.

S.Phophaliya